

Fair Credit Reporting Act—Security Freezes for Protected Consumers; HB 2134

HB 2134 enacts new law supplemental to and amending provisions in the Fair Credit Reporting Act to authorize security freezes on consumer credit reports for protected consumers.

Definitions

The bill establishes definitions in the Fair Credit Reporting Act, including these:

- “Protected consumer” means an individual who is:
 - Under the age of 16 years at the time a request for placement of a security freeze is made; or
 - An individual for whom a guardian or conservator has been appointed;
- “Security freeze for a protected consumer” means one of the following:
 - If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction placed on the protected consumer’s record that prohibits the consumer reporting agency from releasing the protected consumer’s record; or
 - If a consumer reporting agency has a file pertaining to the protected consumer, a restriction placed on the protected consumer’s consumer report that prohibits the consumer reporting agency from releasing the protected consumer’s consumer report or any information derived from the protected consumer’s consumer report;
- “Sufficient proof of authority” means documentation that shows a representative has the authority to act on behalf of a protected consumer, including any of the following:
 - An order issued by a court;
 - A lawfully executed and valid power of attorney; or
 - A written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

The bill also defines “record” and “sufficient proof of identification.”

Security Freezes—Protected Consumers

The bill enacts new law, effective January 1, 2017, to require a consumer reporting agency to place a security freeze for a protected consumer if the consumer reporting agency receives a request from the protected consumer’s representative for the placement of the security freeze and the protected consumer’s representative:

- Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

- Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;
- Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and
- Pays to the consumer reporting agency a fee, as specified in the bill:
 - A consumer reporting agency is permitted to charge a reasonable fee, not exceeding \$10, for each placement or removal of a security freeze for a protected consumer unless the protected consumer's representative has obtained a police report or affidavit of alleged fraud against the protected consumer and provides a copy of this report or affidavit, or a request for placement or removal of a security freeze is for a protected consumer who is under the age of 18 years at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.

The bill further provides if a consumer reporting agency does not have a record pertaining to a protected consumer when it receives a request for a security freeze, the consumer reporting agency will be required to create a record for the protected consumer. The consumer reporting agency will be required, within 30 days after receiving a request meeting the requirements specified in the bill, to place a security freeze for the protected consumer.

Consumer Report Records; Removal of Security Freezes

The bill prohibits, unless a security freeze for the protected consumer has been removed, a consumer reporting agency from releasing the protected consumer's consumer report, any information derived from this report, or any record created for the protected consumer.

Under the bill, a security freeze for a protected consumer will remain in effect until:

- The protected consumer or the protected consumer's representative requests the consumer reporting agency remove the security freeze in accordance with provisions of the bill; or
- The security freeze is removed in accordance with provisions of the bill.

If a protected consumer or a protected consumer's representative wishes to remove a security freeze, the protected consumer or representative must:

- Submit a request for the removal to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;
- Provide to the consumer reporting agency the following sufficient proof of identification of the protected consumer:

- For a request by the protected consumer, proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; or
- For a request by the representative of a protected consumer, sufficient proof of identification of the representative and sufficient proof of authority to act on behalf of the protected consumer; and
- Pay a fee to the consumer reporting agency, as described in provisions in the bill relating to fees, for placement or removal of a security freeze.

Applicability of Security Freeze Provisions; Failure to Comply

The bill does not apply to:

- A person administering a credit file monitoring subscription service to which the protected consumer has subscribed or the representative of the protected consumer has subscribed on behalf of the protected consumer;
- A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative; or
- A person or entity listed in security freeze provisions in the Fair Credit Reporting Act [KSA 2015 Supp. 50-723 (i)(1) and (6) – (12) or 50-724(a)(1) – (5)]. Those persons and entities include federal, state, or local government entities, including a law enforcement agency or court; persons providing a consumer a copy of the consumer's own report at such consumer's request; a child support enforcement agency; check services or fraud prevention services companies; and employers in connection with applications for employment. This also would include any database or file which consists solely of any information adverse to the interests of the consumer (e.g., criminal record information, tenant screening, and employment screening).

The bill further permits a consumer reporting agency to remove a security freeze for a protected consumer or delete a record of a protected consumer if such security freeze was placed or the record was created based on a material misrepresentation of a fact by the protected consumer or the protected consumer's representative.

Finally, the bill provides that any person who fails to comply with any requirement imposed under the new section (made supplemental to the Fair Credit Reporting Act) with respect to any protected consumer shall be liable pursuant to the provisions of the Fair Credit Reporting Act.

Effective Date

The bill takes effect and is in force from and after January 1, 2017, and its publication in the *Kansas Register*.